

# employee plans news

PROTECTING RETIREMENT BENEFITS THROUGH EDUCATING CUSTOMERS

Internal Revenue Service  
Tax Exempt and Government  
Entities Division

A Publication of Employee Plans

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## 2010 Rules for Roth IRAs

Beginning January 1, 2010, the income and filing status requirements for rollovers (including conversions) to a [Roth IRA](#) will be eliminated. Additionally, for rollovers to a Roth IRA in 2010 **only**, a special 2-year option for reporting [taxable portions](#) of your rollover will apply.

Under the current rules, you can roll over a [traditional individual retirement arrangement](#) (IRA), a [SEP IRA](#), a [SIMPLE IRA](#) and an [eligible rollover distribution](#) (ERD) from your retirement plan (other than from a [designated Roth account](#)) and from a plan in which you are the named beneficiary to a Roth IRA only if you meet both these requirements:

- your [modified AGI for Roth IRA purposes](#) is \$100,000 or less; and
- your filing status is not married filing separate.

There are no such restrictions on rolling over amounts into a Roth IRA from either another Roth IRA or from a designated Roth account. Any previously untaxed amounts must be included in your gross income in the year of the rollover.

Under the new rules for 2010, regardless of your income or filing status, you will be able to roll over (convert) the following to a Roth IRA:

- your traditional IRA, SEP IRA or SIMPLE IRA;
- an ERD from your retirement plan (for example, a [401\(k\)](#) or a [403\(b\)](#) plan); or
- an ERD from a retirement plan for which you are a beneficiary.

For rollovers and conversions to a Roth IRA in 2010 only, you will have the option of reporting the taxable portion of your rollover in your gross income for 2010, or reporting half in 2011 and half in 2012.

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## Roth IRA Distributions

Roth IRAs are funded with after-tax contributions, so you don't have to pay income taxes on those contributions when they are distributed, and if the distribution is a "qualified distribution," earnings, too, escape being included in gross income. Therefore, knowing what constitutes a "qualified distribution" and other Roth IRA distribution rules may allow you to avoid income tax on any earnings that are distributed as well as the [additional 10% early distribution tax](#).

A "qualified distribution" from a Roth IRA is one made:

1. after 5 years – (measured from January 1 of the year for which you first made any Roth IRA contributions, including rollover or conversion contributions, and ending on the last day of the fifth year); and
2. a. on or after you are age 59 ½;  
b. because you are disabled;  
c. after you die; or  
d. to buy, build or rebuild your first home.

Since Roth IRAs can be funded by regular contributions and *rollover contributions* (see related article, above) that can be made at different times, it is important to understand when the 5-year period has occurred for a qualified distribution. A *rollover contribution* is any amount rolled over from an employer-sponsored retirement plan, converted from a non-Roth IRA to a Roth IRA or moved from one Roth IRA to another Roth IRA. The following scenarios explain how to measure the 5-year period for "qualified distributions."

### ***Roth IRAs made up of only regular Roth IRA contributions***

The 5-year measurement period to determine whether a distribution is qualified begins with the first day of the tax year for which you make a regular Roth IRA contribution to **any** Roth IRA.

For example, assume you make a regular Roth IRA contribution to Roth IRA #1 on April 15, 2002, for the 2001 tax year. You then make a regular Roth IRA contribution to Roth IRA #2 on July 30, 2004. The 5-year measurement period for both Roth IRAs begins on January 1, 2001, the first day of the tax year for which you first made a regular contribution to any Roth IRA. Even if you withdrew all regular contributions and earnings (not as a [corrective distribution](#)) from both Roth IRAs on January 1, 2006, and then made a regular contribution on December 30, 2006, for the 2006 tax year to a new Roth IRA, the 5-year period would still be measured from January 1, 2001.

## What about rollover contributions or traditional IRAs converted to Roth IRAs?

When you roll over money into a Roth IRA or convert a traditional IRA to a Roth IRA, the 5-year period for determining whether a distribution is qualified is measured from the year of the rollover or conversion **unless** you had previously made a contribution to any Roth IRA. In that case, the 5-year period starts with the first day of the tax year for which you made a regular Roth IRA contribution to **any** Roth IRA (the same as for regular Roth IRA contributions).

### If a Roth IRA distribution is not a qualified distribution, how much of it is taxable?

There is a special order in which contributions (including rollover contributions) and earnings are considered to be distributed from your Roth IRA. Distributions come:

- first, from regular contributions;
- second, from rollover and conversion contributions (considered distributed from earliest years first) and within each rollover or conversion, in the following order:
  1. the taxable portion (the amount that you included in income because of the conversion or rollover),
  2. then the nontaxable portion; and
- finally, from earnings.

In applying these ordering rules, you must aggregate all the Roth IRAs you own and all the distributions made in a year. Also, you should disregard excess Roth IRA contributions and related earnings, and rollover contributions that came from other Roth IRAs for the above rules.

### Example

Joe converted his traditional IRA of \$80,000 on October 15, 2005, to Roth IRA #1. At this time, Joe had no other Roth IRAs, and Roth IRA #1 was established with the October 15<sup>th</sup> conversion. So the 5-year period begins on January 1, 2005 (the first day of the taxable year for which a Roth IRA contribution was first made by Joe). His *Nondeductible IRAs*, [Form 8606](#), filed with his 2005 income tax return shows that of the \$80,000 converted, \$20,000 is after-tax contributions. Joe included \$60,000 in his 2005 gross income. On February 23, 2009, Joe established a second Roth IRA, Roth IRA #2, by making a \$5,000 regular contribution. On December 15, 2009, Joe, then aged 60, took a distribution of \$7,000 from Roth IRA #1.

Joe's distribution was a nonqualified distribution because it was made on December 15, 2009, which is before the end of the 5-year period (January 1, 2005 to December 31, 2009) required for a qualified distribution. Although Joe met one of the requirements for a qualified distribution (after the age of 59 ½), he did not meet the 5-year-period requirement.

However, applying the Roth IRA distribution ordering rules, Joe's nonqualified distribution of \$7,000 is still not includible in gross income since it is considered distributed from:

Joe's regular Roth IRA contributions	= \$ 5,000
Part of the \$60,000 that Joe included in income at conversion	= <u>\$ 2,000</u>
	\$ 7,000

### Does the 10% early distribution tax apply to non-qualified distributions from Roth IRAs?

Yes. Unless some Code [§72\(t\) exception](#) applies, the 10% early distribution tax under Code §72(t) applies to the portion of any nonqualified distribution that is included in gross income and to the portion of the nonqualified distribution that is from amounts rolled over or converted within 5 years prior to the distribution. However, the early distribution 10% tax is only applied to the portion of the rollover or conversion that you had to include in income at the time of the rollover or conversion. Solely for purposes of applying the Code §72(t) tax, each rollover or conversion contribution begins its own 5-year period (that is separate from the 5-year period used to determine whether the distribution is qualified). So, in the above example, if Joe was age 59 instead of 60 and no other Code §72(t) exception applied, even though none of the distribution is includible in gross income, he will have to pay the 10% early distribution tax. This is because part of the amount that he received (\$2,000) was attributable to the conversion he made within 5 years of receiving the distribution and was part of the converted amount he had to previously include in income (\$60,000). Joe will have to pay \$200 (\$2,000 x 10%) 10% early distribution tax under Code §72(t) with his Form 1040 tax return.

## Notice Requirements for Pension Plans That Reduce Benefit Accruals

IRS issued [new regulations](#) under Code [§4980F](#) on November 24, 2009. The new regulations update the existing regulations for changes made by the Pension Protection Act of 2006 ([PPA](#)) with respect to [ERISA §402\(h\)](#) notices. A §204(h) notice is required when a plan is amended to allow a reduction in benefit accruals before the [applicable amendment date](#) (204(h) amendment).

When a pension plan is amended to significantly reduce the rate of future benefit accruals, including the elimination or reduction of an early retirement benefit or a retirement-type subsidy, it must notify all applicable participants, beneficiaries and contributing employers (in a multiemployer plan). The §204(h) notice must provide sufficient information for the recipient to understand the benefit reduction. When the plan administrator does not give timely notice, Code §4980F imposes an excise tax.

The plan administrator must give the 204(h) notice within a “reasonable time” before a plan amendment’s effective date. A plan will be considered to have met the reasonable time requirement if it provides a §204(h) notice at least 45 days prior to the effective date of any 204(h) amendment, with the following exceptions:

- 15 days for small and multiemployer plans;
- 15 days for plans maintained by an employer that is a commercial passenger airline or the whose principal business is providing catering services to a commercial passenger airline for their amendments to comply with PPA §402; and
- 30 days for statutory hybrid plans prior to their amendment’s effective date, adopted before December 31, 2008.

These new regulations also retain various rules in the [2008 proposed regulations](#), including:

- A §204(h) notice is not required for a defined benefit plan being amended for the applicable interest or mortality assumptions changes under Code [§417\(e\)\(3\)](#), as amended by PPA; and
- An amended plan that must provide a §204(h) notice along with [certain other statutory notices](#), including an [ERISA §101\(j\)](#) notice, may comply with the §204(h) notice requirements by meeting the requirements of the other statutory notice.

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## More About LESE - Learn, Educate, Self-Correct and Enforce Projects Completed

EP recently completed two examination projects using “LESE,” a compliance initiative started in FY 2007 to test and measure retirement plans’ compliance levels. “LESE” stands for:

- **Learn** - Discover all we can about the retirement plan compliance issues using small examination case samples.
- **Educate** - Let the targeted groups know what we learned and what we expect them to do to correct errors, using outreach and the Employee Plans Compliance Unit’s soft contact notices.
- **Self-Correct** - Give those groups the chance to correct their plan errors using the Employee Plans Compliance Resolution System by offering correction methods through outreach activities and soft contact notices.
- **Enforce** - Re-examine the groups, taking a firm position with those who have not corrected.

Project results and findings from completed LESE projects are now available on our Web site:

1. [Defined contribution plans](#) with less than \$250,000 in assets, and
2. [Top-heavy 401\(k\) plans](#).

Form 5500 returns are randomly selected based on “judgment sampling” for LESE examinations. Various sources (revenue agents, media, Customer Education and Outreach, Rulings and Agreements, etc.) help the Director of Employee Plans and the Director of Employee Plans Examinations by providing information for possible examination selection. EP analyzes the information for trends or potential issues.

The [LESE Web page](#) contains tips on avoiding the errors we found. We will routinely update this Web page with reports from additional projects as they are completed. We will also highlight some of these projects in future editions of this newsletter.

## 2009-2010 Employee Plans Guidance Plan

IRS released the [2009-2010 Priority Guidance Plan](#), which contains 315 projects scheduled for completion from July 2009, through June 2010. This year's Plan contains 42 employee plan items, some of which are already completed. The remaining items include:

### **I. Guidance:**

- Group trusts
- International tax issues related to tax-favored retirement plans
- Lifetime income from defined contribution plans
- Certain annuity distributions from defined benefit pension plans
- 403(b) plan terminations
- Governmental plan status under Code §414(d)
- Procedures for ruling requests under Code §414(e) for church plans
- Eligible combined plans under Code §414(x), added by the Pension Protection Act of 2006 (PPA)
- ERISA §101(j) notice requirements applicable to single-employer plans subject to funding-based benefit limitations added by PPA
- Distributions from 457(b) plans for unforeseeable emergencies

### **II. Notices:**

- Definition of readily tradable securities for ESOPs
- Certain retirement plan provisions of the Heroes Earnings Assistance and Relief Tax Act of 2008

### **III. Revenue Procedures:**

- 403(b) prototype program
- Multiemployer plan amortization extension requests

### **IV. Proposed Regulations:**

- Issues under hybrid plans
- Code §432 and excise taxes under §4971
- Certain reporting requirements for qualified plans

### **V. Final Regulations:**

- ESOP diversification requirements
- Suspension or reduction of safe harbor nonelective contributions under Code §§401(k) and 401(m)
- Hybrid plans under Code §§411(a)(13) and 411(b)(5), as added by PPA
- Determination of minimum required contributions under Code §430, as added by PPA

See our [Web site](#) and future issues of our newsletters for status updates.



## Critical Priorities...With Monika Templeman

### Today's Discussion: Priorities for the Upcoming Year

*In each issue, Monika Templeman, Director of EP Examinations, responds to questions and offers insights on retirement plan topics uncovered during audits. You may provide feedback or suggest future topics for discussion by e-mailing her at: [RetirementPlanComments@irs.gov](mailto:RetirementPlanComments@irs.gov).*

The title of this column gives a hint of the information I'll be asking you to share for this edition.

Yes, I think it is important to share with the retirement plans community the priorities that I will be focusing on during the next year. Our ongoing mission is to protect plan participants' retirement benefits and plan assets. My agents and managers will continue ensuring compliance by examining plans. Through our outreach programs, we also hope to reach many people who either sponsor a retirement plan or participate in one.

The first priority is to identify and address key **international issues** as they relate to retirement plans. Why are international issues a priority?

In the past couple of years, we have seen an expansion of globalization. Many U.S. companies are asking employees to cross the border in order to place the knowledge and talent where it's most needed. These transfers impact employee benefits, including retirement plan benefits. The Advisory Committee on Tax Exempt and Government Entities (ACT) issued a [report](#) this past June on the importance and need to address issues that will arise in this global economy. We listened.

You took the lead on this priority with the Hacienda Project. What is this project?

In this endeavor, we facilitate communication and the disclosure of return information between Department of Treasury and Puerto Rico (Hacienda). By doing this, we present a unified compliance front to taxpayers and their representatives. We recently trained about a dozen agents from the Hacienda, and starting next month, my agents will work side-by-side with these agents to enhance what they learned.

What other plans do you have for this priority?

Since we cannot address these compliance issues on our own, we will be expanding relationships with other territories as we did with the Hacienda Project. We are also developing projects that the Employee Plans Compliance Unit ([EPCU](#)) will work. Finally, we are exploring the opportunity to work with other IRS business operating divisions, such as Large and Mid-Size Business.

The second priority involves the **401(k) plan** community. What are your plans here?

The 401(k) plan, to nobody's surprise, is our country's fastest growing retirement vehicle. Our estimates indicate there are over a half million 401(k) plans in existence. To the relief of most of the readers, we cannot examine every one of these plans so we provide many tools, such as a [401\(k\) Fix-It Guide](#) and a [401\(k\) Checklist](#), for plan sponsors and representatives to use to properly operate their plans. It's time to gain a better understanding on the "health" of these plans. We developed a questionnaire which will be sent to a random sample of 401(k) plan sponsors. The answers will enable us to determine if the tools I mentioned earlier are working or even being used, and for us to better understand compliance behaviors.

What will you specifically do with the answers from the questionnaire?

We will prepare a report of our findings and publish it on our [Web site](#). We will also enhance our web-based products, presentations and newsletter articles to better serve the needs of the plan sponsors.

Sharing information with the **governmental plans** community comes in as the third priority. This started last year, correct?

Correct. Last year, EP kicked off a Governmental Plans Initiative to raise awareness of tax qualification requirements and IRS programs available to the governmental plans community. We piloted a questionnaire to gain more information about this segment of the retirement plan population.

What are your plans for this year?

We want to analyze the information we received from the questionnaire. From our conclusions, we will be able to better focus our education and outreach efforts to the topics they need or wish to utilize. We will also continue to monitor the questions, comments and/or suggestions we receive from our [governmental plans Web page](#).

Last but not least – the final priority involves **abusive transactions**. This has been a priority for a few years.

Yes, it is a constant high priority on the EP radar. We have taken a careful examination approach to these [transactions](#) and will continue to do so. We have a team that evaluates emerging issues identified by EP agents while on examinations and from external sources. In addition, the EPCU works several projects relating to abusive transactions. As long as these transactions and emerging issues are present, we will be taking our usual aggressive stance.

How do you plan on sharing the progress of these priorities?

I will continue to provide updates in this segment of the newsletter. I will also be updating everyone through my presentations at the various [2010 EP Benefit Conferences](#) across the country.

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## Deadline for Certain Required Plan Amendments is Extended

The IRS issued [Notice 2009-97](#) on December 11, 2009, to give plan sponsors additional time to adopt plan amendments for certain requirements of the Code added by the Pension Protection Act of 2006 ([PPA](#)), and subsequently modified by the Worker, Retiree, and Employer Recovery Act of 2008 ([WRERA](#)). The extension considers recently and soon-to-be issued regulations. The deadline is extended to the last day of the first plan year that begins on or after January 1, 2010. However, to be eligible for the extended plan amendment deadline, plans must continue to operationally comply with PPA §1107. The extended plan amendment deadline applies to the following requirements:

1. funding-based limits on benefits and benefit accruals under Code [§§401\(a\)\(29\)](#) and [436](#) for single-employer defined benefit (DB) plans;
2. vesting and other special rules for cash balance and other Code [§411\(a\)\(13\)\(C\)](#) DB plans to meet Code §411(a)(13) (other than Code §411(a)(13)(A)) and Code §411(b)(5) requirements; and
3. defined contribution plan diversification requirements under Code §401(a)(35)(E).

This notice also provides limited relief from the [anti-cutback requirements](#) for amendments adopted by the extended plan amendment deadline for Code §§401(a)(29) and 436. The notice further states that limited Code §411(d)(6) relief is expected to be granted for amendments adopted by the extended plan amendment deadline for Code §411(b)(5) when the final regulations are issued for Code §§411(a)(13) and 411(b)(5).

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## Web Spins

Check out our latest postings to the [Retirement Plans Community](#) Web page:

- The [2010 annual cost-of-living increases](#) for qualified retirement plan contribution and benefit limits.
- The [2010 traditional and Roth IRA contribution and deduction limits](#).
- Redesigned [Correcting Plan Errors](#) Web page makes it easier to find information on using the Employee Plans Compliance Resolution System (EPCRS).
- [Form 5500 Corner](#) - Notices 1388, 1389 and 1391  
Changes for the 2008 Form 5500 Instructions for Schedule R, Schedule MB and Schedule SB.

## We're Glad You Asked!

Each issue of the *EPN* looks at a common question we receive and provides an answer and additional resources in response to the question.

### **Does a defined contribution (DC) plan have to withhold federal income tax from a 2009 required minimum distribution (RMD) paid between January 1, 2010 and April 1, 2010?**

A 2009 [RMD](#) paid from a [DC plan](#) between January 1, 2010 and April 1, 2010 may be an [eligible rollover distribution](#) (ERD) and, if so, subject to federal income tax withholding at a rate of 20% under Code [§3405\(c\)](#).

The Worker, Retiree, and Employer Recovery Act of 2008 ([WRERA](#)), waived 2009 RMDs from DC plans (such as, 401(k), profit-sharing, 403(b) and 457(b) governmental plans) and [individual retirement arrangements](#) (IRAs). However, some DC plans continue to pay them. If a 2009 RMD is distributed between January 1, 2010 and April 1, 2010 (for example, to a participant who turned 70½ in 2009, but delayed taking his or her 2009 RMD until April 1, 2010), the mandatory 20% federal income tax withholding applies to that distribution unless it is not an ERD for some other reason.

Normally, RMDs are not eligible to be rolled over, because they are not ERDs. WRERA §201(b) amended Code [§402\(c\)\(4\)](#) to provide that 2009 RMDs would be treated as ERDs (and therefore permitted to be rolled over) if the only reason they previously weren't considered an ERD was because they were a RMD. However, any 2009 RMDs paid from a DC plan on or before December 31, 2009, are afforded the optional withholding rules under Code §3405(a) or (b) and not the mandatory 20% federal income tax withholding that otherwise applies to ERDs. However, the 2009 RMDs paid from a DC plan between January 1, 2010 and April 1, 2010, must have 20% federal income tax withheld from them if they otherwise qualify as ERDs.

#### **Additional Resources:**

[Publication 590](#), *Individual Retirement Arrangements (IRAs)*

[Notice 2009-82](#), *Guidance on 2009 Required Minimum Distributions*

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## We're Glad You Asked!

### **Is it too late for my company to start a retirement plan for 2009?**

No. If you own a business or are self-employed, you still have time to set up a retirement plan for 2009 for yourself and your employees. Most retirement plans must be established before the end of 2009 to get a deduction on the 2009 income tax return. However, all is not lost if you miss the December 31<sup>st</sup> deadline.

You may establish a [Simplified Employee Pension \(SEP\)](#) plan even after December 31, 2009. You have until the due date of the 2009 income tax return, including extensions, to both set up and fund the SEP plan for 2009. For example, if your business's tax return is due March 15, 2010, you may file for an extension of the filing deadline of that return until September 15, 2010, and have until this extended date to set up and contribute to a SEP plan. If you are self-employed and file a Schedule C with your Form 1040 tax return and obtain an extension of your April 15, 2010, filing deadline for the 2009 tax year, you would have until October 15, 2010. You can set up a SEP plan for little or no cost at a bank, an investment firm or an insurance company. See "Establishing a SEP or SIMPLE IRA Plan" in [Retirement News for Employers, Fall 2009](#).

SEP plans offer a high contribution limit and deduction, minimal paperwork and no annual Form 5500 filing. Self-employed people can contribute to a SEP plan even if they participate in an unrelated employer's plan, like a 401(k) plan. Contributions to a SEP plan are subject to the [SEP contribution limits](#), including the Code [§415](#) limits.

#### **Additional Resources:**

[Publication 560](#), *Retirement Plans for Small Businesses*

[Publication 4333](#), *SEP Retirement Plans for Small Businesses*

[IRS Retirement Plans Navigator](#)



## Highlights of the *Retirement News for Employers*

The *Retirement News for Employers* has information for small businesses that have retirement plans. Encourage your clients to join the thousands of existing subscribers to this free newsletter.

The [Fall 2009 Edition](#) featured the following articles:

- 5500 for 2009 and Later Required to be Filed Electronically
- Establishing a SEP or SIMPLE IRA Plan
- IRA Investments
- New Web Tool for SARSEP Plans
- Desk Side Chat...With Monika Templeman discusses "The Importance of Internal Controls and Plan Self-Correction"
- We're Glad You Asked!
  - Q&A explains that employees who decline to participate in the plan's automatic enrollment feature must still receive any employer contributions they would otherwise be eligible to receive under the plan's terms.
  - Q&A reminds plan sponsors that for plan years beginning after December 31, 2009, plans must offer designated nonspouse beneficiaries a direct rollover (trustee-to-trustee transfer) option.

[Subscribe](#) to the *Retirement News for Employers* newsletter.

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## The EPCU Insider

### SIMPLE IRA Plan Follow-Up Project

*This column provides the latest news from our shop so you can be informed if you happen to receive a letter from us. The EPCU addresses pension compliance by using questionnaire studies designed to pinpoint troublesome areas while creating minimal burden to taxpayers.*

The Employee Plans Compliance Unit's (EPCU) featured project on their [Web page](#) is the SIMPLE IRA plan follow-up.

In 2006, Employee Plans sent letters to SIMPLE IRA plan sponsors to assist them with amending their plan document to comply with the provisions of the Economic Growth and Tax Relief Reconciliation Act of 2001 (EGTRRA). The letters provided guidance and relief to sponsors who had failed to timely amend their plan document. Plan sponsors who made the applicable EGTRRA amendments by December 31, 2006, received relief from plan disqualification and sanctions.

To develop this new project, we are contacting SIMPLE IRA plan sponsors to determine if they timely amended their plan documents. Plan sponsors are asked to complete a short information request and return it.

Plan sponsors who did not take advantage of the relief provisions by December 31, 2006, should consider [amending](#) their plans now under the Employee Plans Compliance Resolution System ([EPCRS](#)) to avoid losing their plans' tax-qualified status.

Sponsors who receive a letter and have questions may visit the EPCU's [Web page](#) or call the contact person listed on the letter.

## PBGC Insights

### Irrevocable Commitments - Request for Public Comment

On November 23, 2009, PBGC published a [request for public comment](#) on purchases of irrevocable commitments to provide plan benefits before initiating a standard termination under ERISA §4041. Comments are due by January 22, 2010.



### Reportable Events

Proposed Rule; Guidance for 2010 Plan Years: On November 23, 2009, PBGC published a [proposed rule](#) that would conform its reportable events regulation to statutory and regulatory changes resulting from the Pension Protection Act of 2006 (PPA), eliminate most automatic waivers and filing extensions, add two new reportable events and make some other changes and clarifications. Comments on the proposed rule are due by January 22, 2010.

PBGC submitted the [proposed rule information requirements](#), (now available on PBGC's Web site) for Office of Management and Budget review. Also on November 23, 2009, PBGC issued [Technical Update 09-4](#) that extends guidance provided in [Technical Update 09-1](#) and [Technical Update 09-3](#) for 2010 plan years. Sometime during 2010, PBGC expects to supersede the guidance in Technical Update 09-4 with a final rule amending the reportable events regulation.

### Expected Retirement Age

On December 1, 2009, PBGC published a [final rule](#) amending its valuation regulation by substituting a new table for selecting a retirement rate category. The new table applies to any plan being terminated, either a distress termination or involuntarily by the PBGC, with a valuation date falling in 2010.

### Maximum Guaranteeable Benefit

On December 1, 2009, PBGC published a [final rule](#) removing the maximum guarantee table from its benefit payment regulation and guiding the public to information about the maximum guaranteeable benefits on its Web site. The maximum guaranteeable monthly benefit for 2010 is \$4,500 (unchanged from 2009).

### Benefit Restrictions

Present Value of PBGC Maximum Guarantee: On November 23, 2009, PBGC posted a [table](#) showing the present value of the PBGC's maximum guarantee for 2010, for purposes of certain PPA benefit restrictions.

### Final rule on USERRA Benefits under Title IV.

On November 17, 2009, PBGC published a [final rule](#) that amends PBGC's benefit payments regulation to implement certain provisions of the Uniformed Services Employment and Reemployment Rights Act of 1994 (USERRA).

### 2010 Premiums

Premium Rates: On December 1, 2009, PBGC published a [notice](#) stating that the per-participant flat-rate premium for plan years beginning in 2010 is \$35 for single-employer plans (up from \$34 for plan years beginning in 2009) but remains at \$9 for multiemployer plans. By law, the premium rates are adjusted for inflation each year based on changes in the national average wage index.

Data Changes: A few minor changes were made to create consistency between the Estimated Flat-Rate Filing and the Comprehensive Filing (*for example*, reporting premium proration and amended filing information).

[Premium Payment Instructions](#): Beginning in 2010, the instructions and illustrative forms for the Estimated Flat-Rate Filing and the Comprehensive Filing are consolidated into a single document available on [PBGC's Web site](#).

## Employee Plans Published Guidance

(October 2009 - December 2009)

### Regulations

[T.D. 9467, 74 Fed. Reg. 53004](#)

Contains guidance for single employer defined benefit plans about measurement of assets and liabilities for pension funding, benefit restrictions for underfunded pension plans and benefit restriction notices.

[REG-159704-03 74 Fed. Reg. 48030](#)

Updates the eligibility requirements for performing actuarial services for ERISA-covered employee pension benefit plans and includes their continuing education requirements and standards.

[T.D. 9472, 74 Fed. Reg. 61270](#)

Contains new regulations on ERISA §204(h) notice requirements for a pension plan amendment that is permitted to reduce benefits accrued before the applicable amendment date.

### Revenue Rulings

[Rev. Rul. 2009-40, 2009-52 I.R.B.](#)

Provides covered compensation tables for 2010, that remain the same as 2009, for plans with permitted disparity in employer-provided contributions or benefits.

### Notices

[Notice 2009-82, 2009-41 I.R.B. 491](#)

Allows transition relief for the waiver of 2009 required minimum distributions (RMDs) under WRERA. It also contains two sample amendments that plans may adopt to give recipients a choice to either waive or receive the 2009 RMDs. The sample amendments can be used by plan sponsors to adapt their plan terms to their plan operation relative to the 2009 RMDs.

[Notice 2009-86, 2009-46 I.R.B. 629](#)

Announces the extension of the final effective date for pension distributions at normal retirement age from governmental plans.

[Notice 2009-94, 2009-50 I.R.B. 848](#)

States that qualified retirement plan dollar limitations on benefits and contributions that are adjusted by reference to Code §415(d) and those for deferred compensation plans remain unchanged for 2010.

[Notice 2009-97, 2009-52 I.R.B.](#)

Extends deadline for amending qualified retirement plans for certain Code requirements, as added by the PPA and subsequently modified, to the last day of the first plan year that begins on or after January 1, 2010.

[Notice 2009-98, 2009-52 I.R.B.](#)

Contains the 2009 Cumulative List, with the statutory, regulatory and guidance changes needed for certain opinion, advisory and determination letter requests for the 12-month period beginning February 1, 2010.

## Announcements

[Announcement 2009-82, 2009-48 I.R.B. 720](#)

Provides relief for sponsors of statutory hybrid plans that must amend their interest crediting rate.

[Announcement 2009-85, 2009-51 I.R.B.](#)

States that, beginning on February 22, 2010, the IRS will temporarily stop accepting defined benefit plan determination letter applications filed on Form 5307. This does not affect employers who want to file Form 5307 for pre-approved defined contribution plans.

[Announcement 2009-89, 2009-52 I.R.B.](#)

Provides a remedial amendment period and reliance for employers that, pursuant to upcoming revenue procedures, either adopt a pre-approved 403(b) plan that has a favorable opinion letter or apply for an individual determination letter for a 403(b) plan when available. Plan sponsors and employers should wait to request a ruling or determination letter for their 403(b) plans until after the upcoming revenue procedure is published since it will outline procedures to apply for these letters.

### ***Employee Plans News***

*Employee Plans News* is a free, quarterly newsletter providing retirement plan information for retirement plan practitioners. *EPN* is prepared by the IRS's Employee Plans (Tax Exempt and Government Entities) office.

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#### **Have a Question?**

**For taxpayer assistance with retirement plans technical and procedural questions:**

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**For questions relating to retirement income, IRAs, Roth IRAs, educational IRAs, medical savings accounts, and §125 cafeteria plans:** Please call (800) 829-1040.

## Calendar of EP Benefits Conferences

<b>UPCOMING EVENTS... Name</b>	<b>Date(s)</b>	<b>Location</b>	<b>Co-Sponsor(s) Please Contact</b>	<b>For Further Information,</b>
<b>Los Angeles Benefits Conference</b>	01/20/10 - 01/21/10	Los Angeles, CA	ASPPA & National Inst. of Pension Administrators (NIPA)	<a href="http://www.asppa.org">www.asppa.org</a>
<b>Benefits Conference of the South</b>	05/13/10 - 05/14/10	Atlanta, GA	ASPPA	<a href="http://www.asppa.org">www.asppa.org</a>
<b>Mid-Atlantic Benefits Conference</b>	05/24/10 - 05/25/10	Philadelphia, PA	ASPPA	<a href="http://www.asppa.org">www.asppa.org</a>
<b>RECENT EVENTS... Name</b>	<b>Date(s)</b>	<b>Location</b>	<b>Co-Sponsor(s)</b>	<b>For Information, See</b>
<b>20th Annual SWBA/ IRS Employee Benefits Conference</b>	11/19/09 - 11/20/09	Dallas, TX	SouthWest Benefits Association (SWBA)	<a href="http://www.irs.gov/ep">www.irs.gov/ep</a>
<b>Northeast Area Benefits Conference (2 Locations)</b>	07/16/09 - 07/17/09	Boston, MA & New York, NY	ASPPA & NE Area Pension Liaison Group	
<b>22nd Annual Cincinnati Employee Benefits Conference</b>	06/11/09 - 06/12/09	Cincinnati, OH	Cincinnati Bar Association	
<b>Great Lakes Benefits Conference</b>	04/20/09 - 04/21/09	Chicago, IL	ASPPA & cooperating sponsors	
<b>Benefits Conference of the South</b>	01/15/09 - 01/16/09	Atlanta, GA	ASPPA	

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